

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE BOARD OF EDUCATION AND
THE COMMISSIONER OF CHILDREN, FAMILIES AND LEARNING

In the Matter of the Proposed Revocation or
Suspension of the School Superintendent
License of Jon E. Bathke

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on July 7, 2000, at the Office of Administrative Hearings in Minneapolis, Minnesota. Bernard E. Johnson, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota, 55103-2106, appeared on behalf of the State Board of Education and the Assistant Commissioner of the Department of Children, Families and Learning.* There was no appearance by or on behalf of the Licensee, Jon E. Bathke, 401 Sunrise Lane, Box 311, Grove City, Minnesota 56243. The record in this matter closed at the conclusion of the hearing on July 7, 2000.

This Report is a recommendation, not a final decision. The Commissioner of the Department of Children, Families, and Learning will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Christine Jax, Commissioner, Department of Children, Families and Learning, 1500 West Highway 36, Roseville, Minnesota 55113, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not the Respondent's superintendent license should be revoked, suspended, or otherwise subjected to disciplinary action based on allegations that certain conduct by the Respondent relating primarily to the filing of mileage claims and expense reports constituted immoral character or conduct and/or willful neglect of duty or gross inefficiency in violation of Minn. Stat. § 122A.20, subd. 1(a)(1) and (3).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent, Jon E. Bathke, holds school administrative licenses for district superintendent and secondary school principal. He was employed as superintendent of Independent School District No. 2396 (Atwater-Grove City-Cosmos) under a contract for the period July 1, 1997, to June 30, 2000. He began working with the School District before the effective date of his contract. Ex. B (Arbitration Decision and Award) at 2-3.

2. The Respondent was notified by letter dated May 27, 1998, that a resolution had been unanimously adopted by a roll call vote of the full membership of the School Board of Independent School District No. 2396 proposing to terminate the Respondent's superintendent's contract effective immediately and approving notice of proposed termination. The letter set forth specific factual grounds for the proposed termination, including falsification of School District mileage records and business expense reports; unauthorized expenditure of School District funds, provision of false, inaccurate and/or misleading information to School District officials; false certification that expenses had been incurred on behalf of the School District and had not been paid; dereliction of duty as superintendent to prepare, review and submit accurate mileage and itemized expense reports and properly use a School District credit card; and dereliction of duty as a superintendent to ensure that School District's payment and reimbursement procedures and forms were appropriate. Ex. A.

3. An arbitration proceeding was held between the Respondent and Independent School District No. 2396 on September 9-11 and 24 and October 1, 1998. Arbitrator William E. Martin issued a Decision and Award on February 23, 1999, in which he denied the Respondent's challenge to his immediate termination. Ex. B.

4. The Notice of and Order for Hearing in this matter was served upon the Respondent, Jon E. Bathke, by first class mail on December 30, 1999, at 401 Sunrise Lane, Box 311, Grove City, Minnesota 56243. The Notice of and Order for Hearing was also served by certified mail. The return receipt for the certified mail shows that it was delivered on January 3, 2000, and accepted by Sarah Bathke. Ex. D. By letter to counsel for the Assistant Commissioner dated January 10, 2000, the Respondent acknowledged receipt of the "letter of December 30, 1999" and indicated that he was filing an answer to the charges. Ex. E.

5. By letter dated December 29, 1999, the Notice of and Order for Hearing was filed with the President of the State Board of Education pursuant to Minn. R. 3512.2400, subp. 2(a). Ex. C.

6. The Notice of and Order for Hearing mailed to the Respondent included the following notice: "SHOULD A PARTY FAIL TO APPEAR AT HEARING, THE ALLEGATIONS MADE IN THIS ORDER MAY BE TAKEN AS TRUE. If the allegations in this Order are taken as true, the school superintendent's license of Jon E. Bathke may be revoked or suspended for a period of not less than one year." (Emphasis in original.)

7. On March 23, 2000, the Assistant Commissioner filed a Motion for Summary Judgment in this matter, along with a supporting memorandum.

8. By letter dated March 29, 2000, the Administrative Law Judge informed the Respondent that, if he wished to contest the Motion for Summary Judgment, he must file a written response within ten working days after the motion was received. The Administrative Law Judge also provided information to the Respondent about the nature of a motion for summary judgment and warned the Respondent that, “[i]f the Commissioner’s motion for summary disposition is granted, this matter will be decided in favor of the department of Children, Families and Learning, and no hearing will be held.” (Emphasis in original.)

9. By letter dated April 3, 2000, the Administrative Law Judge continued the hearing originally scheduled for April 4, 2000 in order to allow adequate time for briefing and consideration of the Motion for Summary Judgment.

10. By letter dated April 3, 2000, the Respondent notified the Administrative Law Judge that he did not have the financial resources or the information to contest the current motion and was unable to retain legal counsel and had “no reason . . . to request a hearing.” The Respondent denied engaging in the alleged financial improprieties and otherwise responded to several of the allegations in his two-page letter.

11. By letter dated April 7, 2000, counsel for the Assistant Commissioner responded to several points raised by the Respondent in his April 3, 2000, letter.

12. On May 10, 2000, the Administrative Law Judge ruled that the Respondent was collaterally estopped from relitigating the facts established at the arbitration proceeding involving his termination and granted the Assistant Commissioner’s motion for summary disposition in part, as to the issue of the conduct in which the Respondent engaged while employed as Superintendent of Independent School District No. 2396. The Administrative Law Judge determined that genuine issues of material fact remained for hearing, and otherwise denied the Assistant Commissioner’s motion. A hearing was scheduled for June 21, 2000, to permit the presentation of evidence regarding whether Respondent’s conduct as established in the arbitration proceeding reflected immoral character or conduct and/or gross inefficiency or willful neglect of duty and what, if any, discipline should be imposed.

13. By letter dated May 16, 2000, counsel for the Assistant Commissioner notified the Administrative Law Judge that he was unavailable for hearing until after July 6, 2000.

14. By letter dated May 25, 2000, the Administrative Law Judge notified the Respondent and counsel for the Assistant Commissioner that the hearing would be rescheduled for July 7, 2000, at 9:30 a.m. in the courtrooms of the Office of Administrative Hearings in Minneapolis, Minnesota. The letter contained the following language: **“Should Mr. Bathke fail to appear at the hearing, the allegations made**

in the Notice of and Order for Hearing may be taken as true. If the allegations in the Order are taken as true, the School Superintendent's license of Jon E. Bathke may be revoked or suspended for a period of not less than one year." (Emphasis in original.)

15. By letter dated July 3, 2000, the Respondent notified the Administrative Law Judge that he would not be in attendance at the July 7 hearing. The Respondent's two-page letter again addressed several of the allegations.

16. The Respondent did not make any prehearing request for a continuance or any other relief. The Respondent did not appear at the hearing scheduled for July 7, 2000, or have an appearance made on his behalf.

17. Because the Respondent failed to appear at the hearing in this matter, he is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Children, Families and Learning have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 122A.20, 122A.15, subds. 1 and 2, 122A.18, subd. 1, and 214.10, and Minn. Laws 1999 Chapter 241, Article 10, Section 5, subd. 4(c), and Minn. R. 3512.2400.

2. The State Board of Education and the Department of Children, Families and Learning have given proper notice of the hearing in this matter and have fulfilled all relevant substantive and procedural requirements of law or rule.

3. Any Findings of Fact more properly termed Conclusions of Law are hereby adopted as such.

4. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Order for Prehearing Conference are hereby taken as true.

5. Based upon the conduct of the Respondent as set forth in the Decision and Award of the Arbitrator and described in the Notice of and Order for Hearing, the Respondent engaged in conduct which constituted immoral character or conduct and/or willful neglect of duty or gross inefficiency in violation of Minn. Stat. § 122A.20, subd. 1(a)(1) and (3), and Minn. R. 3512.2400, subp. 1(A) and (C), and the Commissioner is authorized to take disciplinary action against the Respondent's school superintendent license.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that disciplinary action be taken against the school superintendent license of Jon E. Bathke.

Dated this 3rd day of August, 2000

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded (one tape).

* On January 1, 2000, the school administrative licensure function of the State Board of Education transferred to the Commissioner of Children, Families and Learning. See Minn. Laws 1999 Chapter 241, Article 10, Section 5, subd. 4(c), and Minn. R. 3512.2400.